IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7444 OF 2006

Madhav Narayan Agaskar ..Petitioner

Vs.

Kekobad Dossabhoy Doongriwala & Ors...Respondents

Mr.S.G.Deshmukh for the petitioner

CORAM : A.P.DESHPANDE, J

DATED : 14TH NOVEMBER, 2006

P.C.:

1. The petitioner has instituted a suit for declaration and mandatory injunction in regard to some construction carried out by the respondents which rest on the compound wall of the petitioner and abutting the compound wall. The petitioner is also objecting to an underground tank constructed by the respondents which is abutting the compound wall. With a view to bring the fact situation on record, the petitioner moved an application for appointment of Court Commissioner. The trial court has rejected the said application by observing that the petitioner can very well establish the fact of the construction being raised and resting the same

on the compound wall and the petitioner's evidence has not yet commenced. The facts which the petitioner wants to establish are capable of being so established by leading proper evidence in that regard.

2. I do not find any illegality in the order passed by the trial court which do not feel it expedient for the purpose of elucidating the matter in dispute. Perused the order. No interference is called for. Writ Petition is summarily dismissed.

3. It is made clear that it shall be open for the petitioner to lead all permissible evidence with a view to establish his case.

(SHRI A.P.DESHPANDE, J)